DOCUMENT RESUME

ED 458 014 PS 029 860

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TITLE Rights of the Child in Guatemala.
INSTITUTION World Organisation Against Torture (OMCT), Geneva (Switzerland).
ISBN ISBN-2-88477-007-0
PUB DATE 2001-00-00
NOTE 48p.; Report presented to the Committee on the Rights of the Child (27th Session, Geneva, Switzerland, May 21-June 8, 2001). For other reports in the Rights of the Child series, see PS 029 861-862. Supported by Misereor and the Fondation de France.
AVAILABLE FROM World Organisation Against Torture (OMCT), P.O. Box 21-8, rue du Vieux-Billard, CH 1211 Geneva 8, Switzerland. Tel: +4122-809-49-39; Fax: +4122-809-49-29; e-mail: omct@omct.org; Web site: http://www.omct.org.
PUB TYPE Reports - Evaluative (142) -- Speeches/Meeting Papers (150)
EDRS PRICE MF01/PC02 Plus Postage.
DESCRIPTORS Adoption; Child Abuse; Child Advocacy; Child Safety; *Child Welfare; Childhood Needs; *Children; *Childrens Rights; Civil Rights Legislation; Compliance (Legal); Foreign Countries; Government Role; Homeless People; Law Enforcement; Well Being
IDENTIFIERS Child Prostitution; *Guatemala; Street Children; Torture; Torture Victims; *United Nations Convention on Rights of the Child; Victimization

ABSTRACT

This report to the United Nations Convention on the Rights of the Child contains observations of the World Organisation Against Torture (OMCT) concerning the application of the Convention by Guatemala. The report's introductory summary asserts that the end of armed conflict in Guatemala and the establishment of a peace process coupled with other government regulations has led to conditions in which it may be possible to strengthen legal instruments for protecting human rights and improve living conditions for Guatemalan children. The report presents observations and recommendations in the following areas: (1) definition of a child; (2) child prostitution and child trafficking; (3) torture and other cruel, inhuman, or degrading treatment or punishment; (4) street children; and (5) children in conflict with the law. The report's conclusion maintains that although Guatemala has made efforts to protect children's rights, those efforts are not as effective as they could have been had the entry into force of the Code on Children and Young People not been continually postponed. The OMCT expressed concern about the increase in the prostitution of girls and the lack of government effort to combat the trade as well as the high rate of illegal adoptions. The report concludes with a summary of observations and recommendations by the U.N. Committee on the Rights of the Child--Guatemala, in the following areas: civil rights and freedoms; family environment and alternative care; basic health and welfare; education, leisure, and cultural activities; special protection measures; and dissemination of documents from the reporting process. (Contains 54 footnotes.) (KB)

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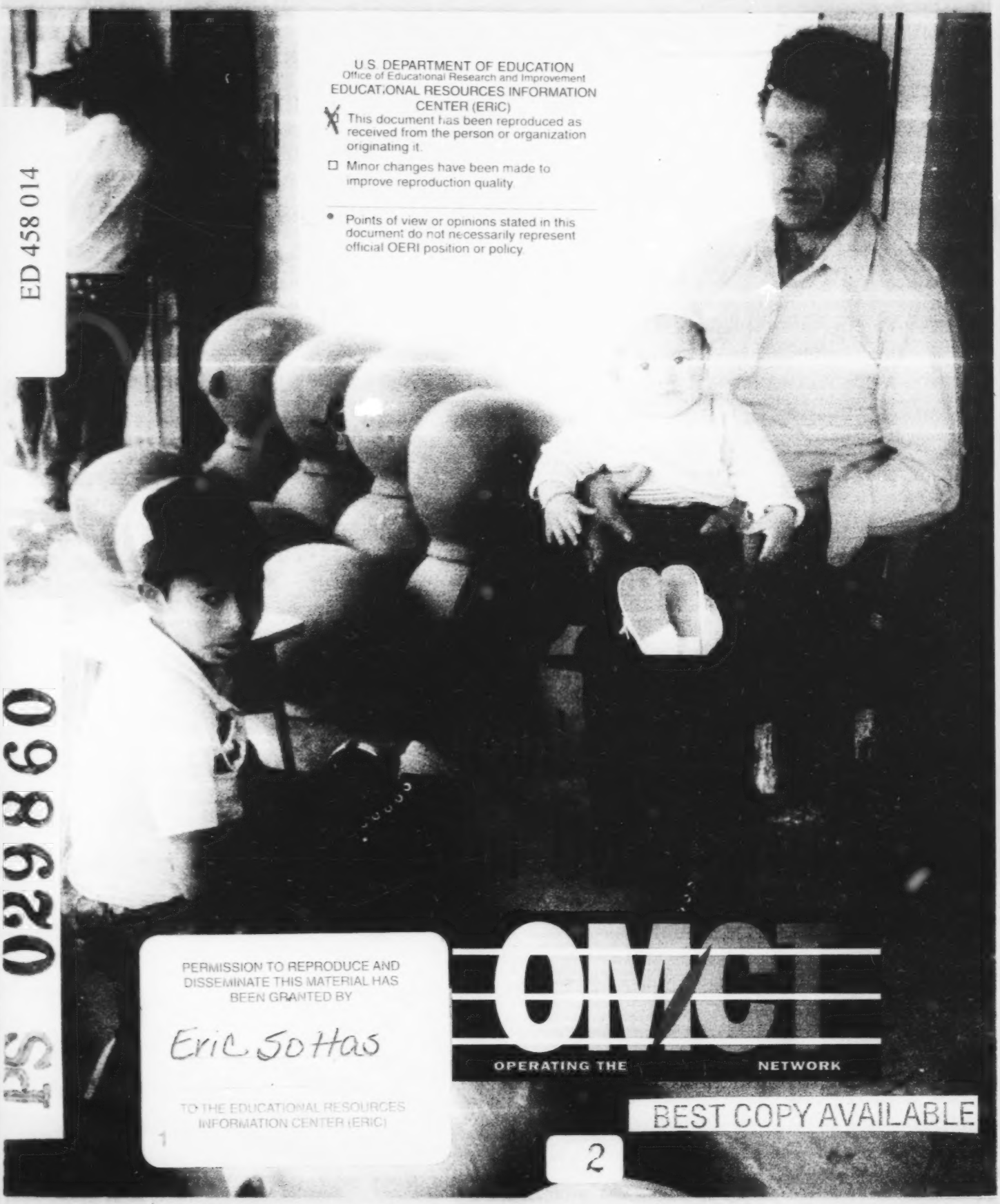

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Rights of the Child in Guatemala

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The aim of OMCT country reports is to prevent torture

In its reports on children's rights, OMCT aims to analyse national laws in terms of the international commitments that a government has made. For example, in some countries families are not informed when their child is detained and this removes a precious safeguard against abuse. The absence of such safeguards facilitates situations where the torture of children can and does occur.

In other words, the reports aim to point out where, often unknowingly, legislation facilitates grave abuses against children.

The legal analysis is supported, where possible, by urgent appeals on the torture of children documented by OMCT. These urgent appeals (OMCT intervenes almost daily on such cases) are the foundation of all our work.

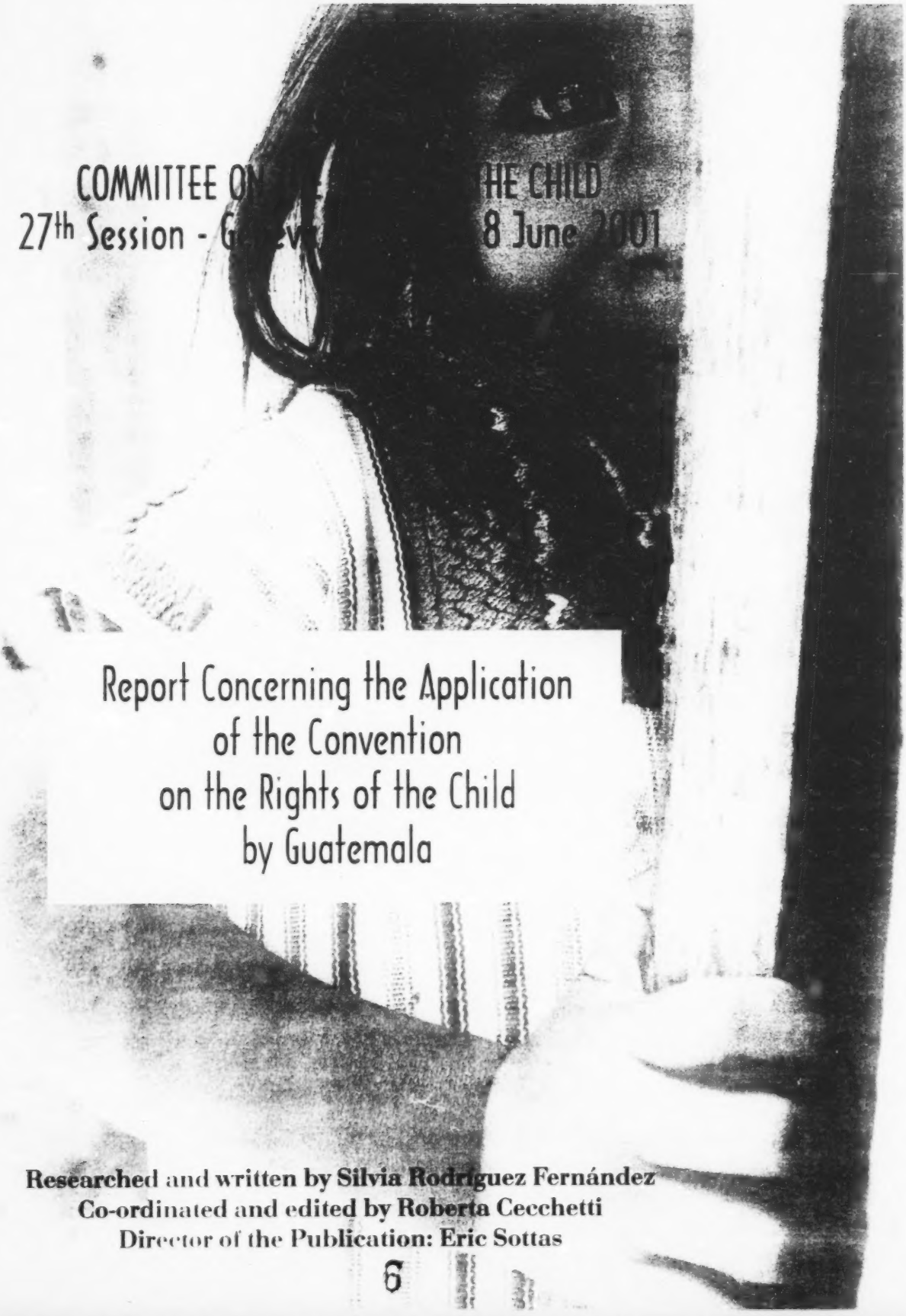
The reports are not legal semantics for their own sake, but represent, in addition to the urgent actions, another side of our strategy to end torture. The reports include meaningful and feasible recommendations for legal reform aimed at reducing the incidence of child torture.

The reports are presented to the United Nations Committee on the Rights of the Child which uses them to analyse how well a country is fulfilling its international commitments with regard to children. Its recommendations on the issue of torture, drawing from OMCT's reports, send a strong message from the international community on the need for action to end the torture of children.

ISBN 2-88477-007-0

Summary

1. Preliminary remarks 7
2. Definition of the Child 9
3. Child prostitution and child trafficking 10
4. Torture and other cruel, inhuman or degrading treatment or punishment 13
5. Street children 17
6. Children in conflict with the law 20
7. Conclusions and Recommendations 25



Report Concerning the Application of the Convention on the Rights of the Child by Guatemala

Researched and written by Silvia Rodriguez Fernández
Co-ordinated and edited by Roberta Cecchetti
Director of the Publication: Eric Sottas

Preliminary Remarks

Guatemala acceded to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment on 4 January 1990. Moreover, Guatemala is party to the International Covenant on Civil and Political Rights, Article 7 of which prohibits any type of torture, cruel, inhuman or degrading treatment or punishment. Guatemala is also party to the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of Racial Discrimination and to the Convention on the Elimination of All Forms of Discrimination against Women.

On a regional level, Guatemala has ratified, *inter alia*, the American Convention on Human Rights and the Inter-American Convention to prevent and punish Torture.

Section 46 of the Guatemalan Constitution states that, "The general principle is established that human rights treaties and agreements approved and ratified by Guatemala have precedence over municipal law." Once that has taken place, the international treaty becomes law for all citizens of Guatemala. Furthermore, the Basic Law of the Judiciary (Decree Law 2-89) provides for the supremacy of the Constitution which states in article 9, "that human rights treaties take precedence over Guatemalan law."[1]

Guatemala has incorporated a number of articles into its 1985 Constitution aimed at strengthening respect for human rights. For instance, Article 2 of the Constitution states that it is the State's duty to guarantee the Republic's inhabitants life, liberty, justice, safety, peace and full personal development. Furthermore, the Government of Guatemala has introduced into its Constitution the position of an Ombudsman[2], responsible for investigating all types of complaints of human rights violations lodged by anybody (Article 275 of the Constitution). Moreover, Articles 203 to 205 of Guatemala's Constitution recognize the independence of the Judicial System.

1 - U.N. Doc. E/CN.4/2000/61/Add.1, Report of the Special Rapporteur on the independence of judges and lawyers, Mr. Param Coomaraswamy, on Guatemala, January 2000, para. 29.

2 - *Procurador*.

OMCT welcomes the second report, submitted by the State of Guatemala to the Committee on the Rights of the Child (hereafter referred to as 'the Report'), which refers to aspects that contribute to the major achievements in the situation of Guatemalan children. Legislative harmonization is one way of achieving such changes. The 1996 Code on Children and Young People[3] is one of the instruments that will contribute to structural changes. However, it has not yet entered into force. The aforesaid Code of 1996 was approved by the Congress of the Republic on 11 September 1996 and approved by the Government on 25 September of the same year. It was due to come into force one year after its publication, that is in October 1997. On that date however, it was decided to postpone its entry into force until 1998, but this never materialised. Therefore, the 1979 Code on Minors[4] is the relevant legislation which is currently in force.

The end of the armed conflict and the signing, on 29 December 1996, of the Agreement on Firm and Lasting Peace[5] establishing a peace process, coupled with the above-mentioned regulations, has led to conditions in which it is starting to be possible to strengthen legal instruments for protecting and guaranteeing human rights and the best living conditions for Guatemalan children.

In this respect, the State of Guatemala affirms in its Report that processes are taking place, especially in restructuring institutions, that are gradually involving more organizations and creating new decentralized structures to guarantee respect for children's rights. For example, the Presidential Committee for Coordinating the Executive's Policy on Human Rights (COPREDEH) has within its structure the Special Division for Children and Young People[6] which is responsible for coordinating all governmental and non-governmental institutions working on children's rights and following up complaints about human rights violations. OMCT wishes to point out that, whilst these measures are genuinely positive, they have to be enshrined in legislation that will give legal bases to all of these institutions and organizations. This is not the case at present, since, firstly, there is a willingness to go beyond and overcome the 1979 Code on Minors and, secondly, even though the new Code on Children and Young People will regulate certain institutions such as the National Council for Children and Young

3 - *Código de la Niñez y la Juventud.*
4 - Código de Menores.
5 - *Acuerdo de Paz Firme y Duradero.*
6 - *Dirección Específica de la Niñez y la Juventud.*

8

People[7] pursuant to Article 86, and the Social Welfare Ministry of the Presidency of the Republic[8], pursuant to Article 91, these two organizations remain non-operational due to the current status of the Code of 1996.

II. Definition of the Child

Article 3 of the 1979 Code on Minors, which is currently in force, states that for the purposes of this Code, minors are considered to be those who have not yet reached their eighteenth birthday . The new regulation in the 1996 Code on Children and Young People changes this definition. Article 2 of the Code on Children and Young People states that a child is considered to be any person from birth until their twelfth birthday[9], and a young person to be any person from the age of 12 years until they reach their eighteenth birthday[10]. OMCT would recommend to the Guatemalan authorities to ensure that, with the entry into force of the 1996 Code, the Convention on the Rights of the Child will be relevant to all children up to the age of 18.

Article 81 of Guatemala's Civil Code provides that the minimum authorised age for females to marry is 14 years, whilst for males it is 16 years. Although an initiative is under way to reform Article 81 of the Civil Code (Decree-Law no. 106), the Congress of the Republic of Guatemala has ensured that the proposed modification has remained without effect. In the final remarks of the first report submitted by the State of Guatemala[11], the Committee on the Rights of the Child stated its opposition to such a regulation, based on the fact that a minimum age at 14 for girls was incompatible with the principles and provisions of the Convention. In spite of this pronouncement, no measures have been taken to amend the provision. OMCT considers it vital for the minimum age of marriage to be raised, given the possible detrimental effects of early

7 - *Consejo Nacional de la Niñez y la Juventud.*

8 - *Secretaría de Bienestar Social de la Presidencia de la República.*

9 - *Para los efectos de este Código, son menores quiénes no hubieren cumplido dieciocho años de edad.*

10 - *Se considera niño o niña a toda persona desde su concepción hasta los 12 años de edad cumplidos, y joven a toda persona desde los 12 años hasta que cumpla los 18 años de edad.*

11 - Doc. CRC/C/15/Add.58, para. 15.

marriage on children's rights. OMCT reiterates the recommendation to amend the provision establishing the minimum age of marriage in order to establish the same minimum age for both young men and women, in conformity with Article 2 of the Convention on the Rights of the Child which prohibits any form of discrimination.

III. Child prostitution and child trafficking[12]

OMCT is concerned about the wide-spread prostitution in Guatemala and the numerous reports of abuse of prostitutes. Equally disturbing is the fact that children are involved in prostitution. According to the UN Special Rapporteur on the sale of children, child prostitution and child pornography, child prostitution is very visible in Guatemala City[13]. The police have estimated that over 2,000 girls and boys are being exploited in over 600 brothels in the capital alone. In addition, there are even brothels where men can hire girls between the ages of 7-9.[14]

However, the UN Special Rapporteur on the sale of children, child prostitution and child pornography noted with concern that no attempts are made by the local citizens to help these women and girls. The local authorities consider it too big a problem to deal with, and often just arrest the women and girls.[15]

In the San Felipe colony, there are mothers who take their 8-12 year old daughters out of school to a men's jail twice a week on visiting days in order to offer them to prisoners as prostitutes. Teachers and health workers expressed their concern to the Special Rapporteur because they are unable to intervene. They also expressed their concern because many girls are contracting HIV and becoming pregnant.[16]

Moreover, the Special Rapporteur has also stated that women and girls are forced to work in the bars and are manipulated by bar owners. When the bars are raided, the police only fine the bar owners and then

12 - This part is taken from OMCT, *Violence against Women. 10 Reports/Year 2000*, 2001, pp 142-145.

13 - U.N. Doc. E/CN.4/2000/73/Add. 2, Report of the Special Rapporteur on the sale of children, child prostitution and child pornography, Ms. Ofelia Calcetas-Santos, on Guatemala, January 2000, para. 57.

14 - *Ibid.*, para. 71.

15 - *Ibid.*, para. 66.

16 - *Ibid.*, para. 72.

release them. Most people are unwillingly to file complaints against the bar owners as they fear reprisals, and the filing of the complaint is necessary for the police to get a search warrant.[17] In fact, the police in Coban informed the Special Rapporteur that they are unable to do anything about the prostitution because the women and girls will take their partners to private places or motels where the police are not allowed to enter without a warrant.

OMCT also expresses its concern about article 87 of the Penal Code, according to which prostitution is an indication of dangerousness. This means that a prostitute will be punished more severely than a woman that is not, even though they have committed the same crime.

International adoptions from Guatemala started to grow exponentionally after Honduras cracked down on illegal adoptions from that country in 1994. The laws allow lawyers to organise private international adoptions with the sole request of the consent of the mother. This has led to many abuses : " ...in the majority of cases, international adoption involves a variety of criminal offences including the buying and selling of children, the falsifying of documents, the kidnapping of children...."[18] An international adoption costs up to 25,000$, permitting a situation that encourages notaries and lawyers to buy babies while they are still in the mother's womb. Even the birth takes place under the supervision and care of the notary.[19]

In a short period of time, Guatemala became the fourth biggest exporter of children in the world (after China, Russia and South Korea). A UNICEF report recently stated that "between 1,000 and 1,500 babies and children are 'trafficked' every year."[20] The best interest of the child is totally ignored and the adoption becomes purely a business transaction.

A worker in a hospital told the Special Rapporteur on the sale of children, child prostitution and child pornography that a judge who owns an adoption home asked her whether there were "babies available" at the hospital.[21] Another means of procuring babies for international adoption is allegedly by tricking or drugging illiterate birth mothers into putting their thumbprint on blank

17 - *Ibid.*, para. 65.

18 - *Ibid.*, para. 13.

19 - *Ibid.*, para. 33.

20 - Quoted in CASA ALIANZA, *State Violence Against Children, Presentation to the United Nations Committee on the Rights of the Child*, September 2000, p. 10.

21 - U.N. Doc. E/CN.4/2000/73/Add. 2, see note 20, para. 43.

pieces of legal paper which are subsequently filled in to read as a consent to adoption of the baby. The mothers are then threatened by the lawyers if they try to get their babies back.[22]

In Escuintla, the Special Rapporteur was told of the case of a prostitute who was pregnant and was threatened with death by the owner of the bar where she worked if she did not give up her baby for adoption. The bar owner worked in cooperation with a midwife, and the pregnant woman was taken to the house of the midwife and kept there under lock and key with other pregnant prostitutes until she gave birth. She did not see her baby again.[23]

A further source of children are public hospitals. At the birth, hospital workers have been known to falsify the birth records and doctors give false information to the biological mother that the newborn is seriously ill. Poor mothers are often not able to return to the hospital daily to visit their newborn who then disappear or are declared abandoned.[24]

The weaknesses in the system have been such that they have resulted in blatant absurdities. The Special Rapporteur was told about a woman who "legally" had 2.5 children a month, whom she gave for adoption, and all the adoptions fulfilled the legal requirements.[25]

Guatemala has still not implemented legislation defining the trafficking of children as a crime, nor ratified the Hague Convention on Inter-Country adoptions. Moreover, the new Children and Adolescents Code of Guatemala that passed Congress in 1996 is still not in force. This code provides for a six year prison sentence for convicted traffickers of children. Therefore, the main resistance against the code came from people involved in inter-country adoptions. It is interesting to note that the first postponement of the Code took place at the request of the then Supreme Court President whose wife is one of these adoption lawyers. The Special Rapporteur on the independence of judges and lawyers, stated in his Report on Guatemala, that the involvement of the judiciary in cases related to Human Rights defenders fighting against illegal adoptions has brought embarrassment and disrepute to the Supreme Court.[26]

22 - *Ibid.*, para. 35.

23 - *Ibid.*, para. 38.

24 - *Ibid.*, para. 42.

25 - *Ibid.*, para. 102.

26 - U.N. Doc. E/CN.4/2000/61/Add.1, Report of the Special Rapporteur on the independence of judges and lawyers, see note 1, para. 143.

IV. Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Article 19 of the Constitution of Guatemala states that no form of cruel treatment, physical, moral or mental torture, coercion or harassment may be inflicted upon prison inmates.

On 10 August 1995, Congress amended the Penal Code by Decree No.58-95, adding article 201bis which defines torture as an offence and lays down legal criteria for the prosecution of the offence and the penalty to be applied. The article states: "The offence of torture is committed by anyone who, on orders from or with the authorisation, support or acquiescence of the State authorities, intentionally inflicts pain or suffering, whether physical or mental, on another person for the purpose of obtaining from that person or a third person information or a confession concerning an act he has committed or by anyone who attempts to intimidate another person or, by so doing, other persons. The offence of torture is also committed by the members of groups or organised gangs having terrorist, insurgent or subversive aims or any other wrongful purpose. The consequences of action taken by a competent authority in the legitimate exercise of its duty and in order to safeguard public order shall not be considered as torture. Anyone responsible for the offence of torture shall be liable to 25 to 30 years imprisonment."

In 1998, the Committee against Torture considered that article 201bis defines torture as an act performed on the orders of a superior and it wondered whether "it was enough not to obey an order for the person concerned not to be considered as a torturer."[27] This would be clearly incompatible with the definition laid down in article 1 of the Convention against Torture. Moreover, OMCT fears that the requirement under article 2 of the Convention against Torture, that under no circumstances whatsoever is derogation permitted from the right to be free from torture, is not upheld under article 201*bis* of the Penal Code.

In this regard, it should also be noted that the Committee against Torture, in its consideration of Guatemala's second report on the implementation of the Convention

27 - U.N. Doc. CAT/C/SR.324, para. 30.

against Torture on 7 May 1998, recommended harmonisation of article 201*bis* of the Penal Code with the definition of torture contained in article 1 of the Convention against Torture.[28] OMCT therefore welcomes the fact that a draft amendment to article 201bis has been prepared.

Moreover, article 425 of the Penal Code says: "Any public official or employee who orders the use of undue duress, torture, degrading punishment, humiliation or any measures not authorised by law against a prisoner or detainee shall be sentenced to two to five years' imprisonment and general disqualification from office. The same sentence shall apply to those who carry out such orders."

Furthermore, article 85 of the Penal Procedure Code states, "Unlawful methods of obtaining a statement: the accused shall not be placed under oath, but simply warned to speak the truth. He shall not be subjected to any form of coercion, threat or promise, except in the form of warnings as explicitly authorised under criminal or procedural law. No measures shall be used to compel, induce or oblige him to make a statement against his will and no charges or counter-claims shall be brought with the aim of obtaining a confession."

However, the ratification of international treaties, the Constitution and the promulgation of laws have proved insufficient to combat torture. The provisions of the Convention against Torture must be put into practice and effective legislative, administrative, and judicial measures must be taken to prevent acts of torture. Impunity for acts of torture and other cruel, inhuman or degrading treatment or punishment remains a major problem.

The current legislation on children does not establish children as specific holders of the right to be protected against torture and violence in general. Rather, children are protected only as members of the family: the second Preamble of the 1979 Code on Minors states that the integral protection of the family engages the participation of the public sector. On the contrary, article 16 of the 1996 Code on Children and Young People, states that it is the duty of the State and society as a whole to safeguard the dignity of boys, girls and young people, sheltering them from any inhuman, violent, terrorizing, humiliating or constraining treatment[29]. OMCT welcomes the improvement

28 - U.N. Doc. A/53/44, para.165.

29 - *Es obligación del Estado y la sociedad en su conjunto, velar por la dignidad de los niños, niñas y jóvenes, poniéndoles a salvo de cualquier tratamiento inhumano, violento, aterrorizador, humillante o constrictivo.*

and strongly recommends that children be entitled to be holders of human rights by urgently put into force the 1996 Code.

A specific legal provision criminalizing torture and other cruel, inhuman or degrading treatment or punishment of children is even more crucial when considering the growing levels of violence against Guatemalan children. Violent acts are frequently carried out with extreme cruelty. For example, on 12 May 1999, a former street child, Marlon Alfredo Bautista Ramírez, aged 16, was wounded in his home by four hooded men who fired shots at him[30]. Many children fear for their lives since they are continually threatened and are victims of violence. Some children, as in the case of Juan Antonio López Rosales, have been unlawfully killed[31]. Juan Antonio López Rosales died on 27 May 1998 after being shot by a person who was never identified.

Child torture is one of the most serious violations of children's rights persisting in Guatemala. One of the main perpetrators of torture is the State Civil Police which has been reported for raping and ill treating street children[32]. In 2000, eight police officials reportedly subjected a number of street girls to sexual abuse and threatened them with further violence if they reported what had happened. Casa Alianza, a member of OMCT, has denounced these activities and demanded that the State Civil Police be held accountable, but has yet to receive an official response. This case is one of many reported cases of rape and torture inflicted upon children, without any real possibility of redress. Much work is being done by non-governmental organizations such as Casa Alianza to address this problem such as recommending measures to prevent torture, strengthening of the process for lodging formal complains and providing medical and psychological care for victims. However, the situation requires concrete legislative and practical measures to be taken at the public level in order to effectively combat the problem, including the enforcement of laws prohibiting the practice and appropriate sanctions applied to public officials who commit such offences.

The compensation that ought to be granted to children or their relatives who have been victims of violations by State officials such

30 - OMCT, GTM Case 040698.CC.

31 - Casa Alianza, member of the OMCT.

32 - *La Policía Nacional Civil y el Sexo Gratuito*, Laura E. Asturias. Article published on 17 February 2001 in 'Diario Siglo Veintiuno'.

as members of Guatemala's Police Force, is rarely granted and when it is, it arrives years after the acts have been committed. Compensation has been granted in a few cases ten years after the violations took place. However, there are at present 400 cases of human rights violations against children outstanding that have not yet been settled by Guatemala's judicial system.

Support is being given through the mass media to strengthen measures ensuring respect for children's rights. Moreover, a study and collection of data by the Historical Clarification Commission[33] of the State of Guatemala is being carried out in order to investigate the real scale and effects of child torture. So far, the results of such investigations show that the number of complaints against torture and violence against minors is rising every year. According to statistics, 735 cases of child torture were reported in 1998 and 869 in 1999[34]. These figures show that, despite the existing legal framework for protecting children's rights in Guatemala, there continue to be gaps and deficiencies in this framework. The legal framework suffers from the absence of a consistent, specific policy, being primarily composed of a number of fragmented measures. OMCT considers that it is not sufficient to raise public awareness regarding the protection of children from all forms of violence, but that government bodies, in cooperation with non-governmental organizations, must establish legal and other measures to prevent and combat violence against children.

The Report has omitted to specify how the crime of torture is reported and prosecuted and by which institutions. This omission is highly regrettable given that many non-governmental organizations, such as Casa Alianza and the *Comisión de Derechos Humanos* de Guatemala report that the level of impunity means that legal proceedings are rarely instituted to prosecute violations of rights.

OMCT stresses the importance of protecting the fundamental rights of children and adolescents who have been victims of violence. In this regard, the Report deals with this issue in an overly brief manner, by mentioning that no specific policy exists to minimize the effects of violence, that there is one article in the Code on Children and Young People dealing with the issues (but which cannot be applied) and that 114 criminal proceedings are currently pending.

33 - *Comisión de Esclarecimiento Histórico.*

34 - Source: Procuraduría General de la Nación.

Without a specific programme to eradicate violence containing measures for identifying causes, treating problems and preventing violence, it is very difficult to reduce the high levels of violence in Guatemala admitted in the Report[35].

V. Street Children

According to Casa Alianza, around 5,000 boys and girls live on the streets of Guatemala City, mostly aged between seven and fourteen, and practically all have been the victims of violence at least once[36].

Street children in Guatemala live in conditions of extreme poverty. They found themselves on the street mostly as a result of ill treatment, abandonment or rejection by their family, amongst other reasons; the only place they have to live is on the street. The Report states that the number of boys and girls living on the street has been growing in recent years. The conditions in which such children live are poor, leading to malnutrition, respiratory infections, sexually transmitted diseases, etc. In order to survive, the large majority of such children steal and many consume drugs, glue, alcohol and tobacco.

Article 5 of the code on Minors states that children considered to be in an irregular situation are those who suffer from or are likely to suffer from deviations or disorders in their physiological, moral or mental state and those who have been abandoned or are in jeopardy[37]. This category of "irregular situation" might include street children, children who have committed violent crimes and children who have been abandoned or abused by their families, without differentiating between the said groups. Penal measures must be distinguished from welfare measures because failure to do so may lead to criminal and penal institutions being considered on the same level as welfare institutions devoted to caring for and attending to groups such as street children and also to possible stigmatisation of street children as criminals. The Committee on the

35 - Doc. CRC/C/65/Add.10, para 274.

36 - Source: Casa Alianza Guatemala: niños y niñas de la calle. www.casa-alianza.org

37 - *Se consideran menores en situación irregular, aquéllos que sufran o estén expuestos a sufrir desviaciones o trastornos en su condición fisiológica, moral o mental y los que se hallen en abandono o peligro.*

Rights of the Child has already expressed its concern at this confusion, and in its recommendations[38] accompanying the first report submitted by Guatemala it declared the need to adopt measures for harmonizing national legislation with the provisions of the Convention on the Rights of the Child, especially since the Code on Minors was still in force at the time; it requested that the Code on Children and Young People be brought into application at last. It should be noted that the State of Guatemala has not acted on the recommendations of the Committee on the Rights of the Child, since the 1979 Code on Minors is still in force today.

Paragraph 277 of the Report of the State of Guatemala states that the Presidency of the Republic and the Municipality of Guatemala have promoted consultation with government institutions, non-governmental organizations and international bodies for the purpose of drawing up a plan for the care of street children[39]. This Plan has objectives such as improving the situation of children and taking preventive measures at community and family level. OMCT acknowledges that this is beneficial for the situation of children living on the street but points out that the Report does not state when the said Plan is due to start nor what concrete measures it is expected to carry out.

The security forces of the State of Guatemala were responsible for violently assaulting minors during the armed conflict. The peace process has meant that even though repression against street boys and girls has declined, nevertheless, violations of the rights of street children continue. Non-governmental organizations, such as Casa Alianza, the Human Rights Committee of Guatemala and the Human Rights Office of the Archdiocese of Guatemala[40] report that private security forces, ex-policemen and ex-soldiers, perpetrate the largest number of rights violations against children. Children are frequently punished for minor thieving, and drug related offences by these groups within a climate of increasing impunity.

Another of the major social problems affecting street children is drug addiction. The large number of boys and girls forced to live on the street is leading to an increase in the consumption of drugs, glue, alcohol and

38 - Doc. CRC/C/15/Add.58, para. 12.

39 - *Plan de Atención a los niños que viven en la calle.*

40 - *Oficina de Derechos Humanos de la Arquidiocésis de Guatemala.*

18

tobacco. It is important to initiate plans for preventing and combating drug addiction. Guatemala does not have an organized institutional structure for this, but it could promote a number of measures and implement them with the aid of non-governmental organizations and other collaborating institutions.

Another aspect that needs to be emphasized is that poor children, especially street children, are almost always detained in prison whilst waiting to appear in court, whereas children in better economic situations are more likely to be released under their parents' responsibility. This not only constitutes discriminatory detention, but also contravenes article 37(b) of the Convention on the Rights of the Child and article 13.1 if the UN Standard Minimum Rules of the Administration of Juvenile Justice which provide that detention shall only be used as a measure of last resort and for the shortest period of time.

OMCT wishes to point out that Guatemalan street girls are particularly exposed to exploitation and sexual abuse. In view of this, OMCT considers that it is not sufficient, as the Report states, to carry out investigative studies but, that it is necessary to also develop and provide prevention and care programmes for street girls, in addition to programmes of physical and psychological rehabilitation and reintegration.

On 30 January 2001, it is reported that two uniformed members of Guatemala's State Civil Police abducted two street girls in Guatemala[41]. These two police officers, together with other members of the Police, entered a house containing six street girls who were threatened and raped and two of them were abducted. This case is under official investigation, following a joint complaint filed by Casa Alianza and OMCT.

The impunity that exists within Guatemala's judicial system is one of the major contributing factors to the perpetuation of human rights abuses against children. Such impunity is clearly reflected in statistics. For example, out of a total of 392 cases of murder, torture and violence against an estimated 5,000 street children between 1990 and 1998, 51% of cases were dropped due to a failure on the part of the Police and the Attorney General's Office to investigate them. 44% of the remaining cases have been under investigation for eight years[42].

41 - OMCT, GTM case 120201.CC/VAW and GTM case 120201.1CC/VAW.

42 - Source: Casa Alianza, member of the OMCT.

Members of the security forces have been responsible for the majority of human rights violations. The events that occurred on 11 and 25 February 1999 are illustrative of this situation. One State Civil Policeman, identified as Moisés Che Ba, and one unidentified member of the Special Forces of the Guatemalan Police, assaulted three street girls, by detaining them illegally and attempting to rape them. Four children identified the State Civil Policeman as the perpetrator. Despite this evidence, his arrest was not ordered and no investigation was carried out[43].

Another example of impunity is the case concerning a member of the Treasury Department Guard, Ezequiel Ramírez Ramírez[44]. In 1996, whilst on duty and wearing uniform, Ramírez reportedly killed Raúl Ramos, a 16-year-old boy. Ramírez was arrested three years later and pleaded self-defence. The judges took self-defence into consideration in their decision, ignoring the fact that the minor was not even armed. Such incidents prove that in a large number of cases, and despite overwhelming evidence, the perpetrators are not held responsible.

VI. Children in conflict with the law

The situation of Guatemalan children in conflict with the Law is a major cause of concern, since the State of Guatemala is clearly experiencing a crisis not only in its judicial system, but also with regard to infrastructure and resources for coping with the country's high juvenile delinquency rates.

The Report states that the problems of poverty, unemployment, basic services, illiteracy, etc. suffered by Guatemalan society are reflected in self-destructive and anti-social behaviour. This often leads children into situations of conflict with the law and measures need to be taken to combat the problem.

43 - OMCT, GTM case 190399.CC/V AW and GTM case 150299.1CC/V AW.

44 - Casa Alianza, member of the OMCT.

6.1 Age of criminal responsibility

Article 163 of the Code on Children and Young People states that a distinction shall be made between two groups in respect of proceedings, measures and their execution: children aged between 12 and 15 years, and those from the age of 15 up to their 18th birthday[45]. Article 165 of the Code on Children and Young People states that any acts committed by a minor of twelve years of age, which constitute an offence or infringement, do not come under this heading[46], meaning that children of twelve years of age are not criminally responsible. Overall, this new regulation in the Code on Children and Young People is undeniably positive in some respects, but it should also be noted that at present its application remains pending its entry into force.

6.2 Judicial system and Juvenile Courts

While the Code on Children and Young People is not in force, the current regulations applying to minors in conflict with the law relate to a system designed and implemented 22 years ago[47]. As a result, the judicial system for minors in conflict with Guatemala's criminal law system has large gaps due to the obsolescence of the Code on Minors. The observations of the Committee on the Rights of the Child concerning the first report submitted by the State of Guatemala[48], which gave special importance to the need for Guatemala to promote respect for Articles 2 (non-discrimination), 3 (best interests of the child), 6 (inherent right to life) and 12 (freedom of expression) of the Convention on the Rights of the Child should be reiterated in this regard.

The State of Guatemala affirms in its Report that, following the new Code on Children and Young People, a process of decriminalisation is under way in the area of juvenile criminal responsibility, based on a new definition of "crime", which assigns more responsibilities to the community and less to the child. New measures to be applied include the principle that children shall only be deprived of their liberty as a last resort. These proposed measures do not, however,

45 - *Se diferenciará en cuanto al proceso, las medidas y su ejecución entre dos grupos: a partir de los 12 y hasta los 15 años de edad, y a partir de los 15 y hasta tanto no se hayan cumplido los 18 años de edad*

46 - *Los actos cometidos por un menor de doce años de edad, que constituyan delito o contravención, no serán objeto de este título.*

47 - Source: Secretaría de Bienestar Social, Instituto de Estudios Comparados en Ciencias Penales de Guatemala. Reference is made to the 1979 Code on Minors.

48 - Doc. CRC/C/15/Add.58, paras. 25 and 32.

reflect the reality in which the young people of Guatemala are living, since in practice the first measure that is applied to young people who come into conflict with the law, is often to deprive them of their liberty, sometimes arbitrarily, extra-judicially and without the due guarantees to which children are entitled in accordance in the Convention on the Rights of the Child, and specifically Article 37. Since the said Code of 1996 is not in force, the 1979 Code on Minors is applied. It does not require that Juvenile Judges or District Attorneys to have special skills. In addition, officials do not currently receive training on the rights of children and human rights. By contrast, Article 187 of the 1996 Code on Children and Young People specifies that courts and tribunals shall specifically deal with cases of children in conflict with the criminal law system: acts in conflict with the criminal law system, committed by young people, shall be dealt with, in the first instance, by courts for juveniles in conflict with the criminal law system and at the appeals stage, by the appellate court for children and young people[49]. OMCT welcomes the fact that this new Article introduces clearly and effectively special juvenile courts, and again emphasises the urgent need to enter the regulation into force, so that the Guatemalan legislation is fully compatible with the Convention on the Rights of the Child. OMCT stresses the need for a juvenile justice system to be established and that this judicial system has to guarantee that: no detentions are practised that infringe legal guarantees; deprivations of liberty are legal and are not accompanied by torture, ill treatment or cruel, inhuman or degrading punishment; and that no threats or coercive measures are made by the authorities themselves.

The Constitution of Guatemala, in Articles 19 and 20, refers to a judicial system with many of the same guarantees that the Convention also provides. For example, Article 19 states that treatment for prisoners should be aimed at social re-adaptation and re-education, whilst Article 20 refers to the treatment to be given to children in conflict with the law, which must be aimed at comprehensive education, and children must always be attended to by specialized personnel within institutions. Another limitation in the application of a juvenile justice system in Guatemala, with special courts for children results from the budget cuts that have been introduced as from 2000. It is crucial to provide adequate funding in order to be able to establish and

49 - *Sobre los hechos en conflicto con la ley penal, cometidos por jóvenes, decidirán, en primera instancia, los juzgados de jóvenes en conflicto con la ley penal y en segundo grado, el tribunal de segunda instancia de la Niñez y la Juventud.*

maintain a juvenile justice system that fully complies with the provisions of the Convention.

6.3 Police custody and detentions

Guatemala's current judicial system does not serve children well, given that children fail to receive treatment appropriate to their age. Children held under arrest or whilst awaiting trial are not treated in a manner consistent with the presumption of innocence in contravention to Article 14 of the Constitution, which states that there is a general presumption of innocence, and Article 174 of the Code on Children and Young People. In this respect, OMCT wishes to point out that a presumption of innocence is not enshrined in the current Code on Minors. OMCT also wishes to emphasise that, as far as possible, detention prior to trial should be avoided and limited to exceptional circumstances. In the event that children are detained whilst awaiting trial, they must be separated from convicted offenders, as laid down in Rule 17 of the Minimum Rules for the Protection of Juveniles Deprived of their Liberty (Beijing Rules) and from adults.

There are routine violations of human rights in the pre-trial detention practices of Guatemala's juvenile justice system, since pre-trial detentions usually exceed the stipulated maximum of thirty working days, as established by article 86 of the Code on Minors. It is not uncommon for children to be detained from several months up to one year whilst awaiting court rulings on their cases[50]. OMCT wishes to point out that a time limit of thirty days is excessively long, given the international legal principles that this period or pre-trial detention should be as brief as possible, in line with the best interests of the child.

In accordance with article 35 of the current 1979 Code on Minors, a hearing should be held immediately following the child's arrest before a Judge. According to Article 35, those present at the hearing should be the accused child, the police official who arrested the child, the victim of the alleged crime and the accused child's parents or guardians. However, in practice only the accused child and the police official tend to be present[51], which diminishes the child's ability to defend him or herself and fails to comply with the provisions of Articles 3 and

50 - *The forgotten children of Guatemala*, Human Rights Watch, New York, 1997.

51 - Interview by the Children's Rights Project of Human Rights Watch with the Juvenile Court Judge, Mildred de la Roca, City of Guatemala, 12 September 1996.

40.2.b.ii) of the Convention on the Rights of the Child which establish the best interest of the child principle and the right to have legal or other appropriate assistance in the preparation and presentation of his or her defence, respectively.

OMCT welcomes the measures introduced by the Code on Children and Young People which establish a new definition of "crime", as well as assigning responsibilities to the community and to State bodies in the application of relevant measures, including deprivation of liberty being used as a last resort. A positive development is the Action Plan of the State of Guatemala for 1996-2000, which establishes as its major goals the elimination of all extra-judicial deprivation of children of their liberty and the restructuring of a policy for protecting children's rights.

Besides this welcome development, the practice of detention still appears to contravene the principles of the Convention on the Rights of the Child in Guatemala as the following case demonstrates. On 2 February 1999[52], the State Civil Police arrested 22 street children, aged between 13 and 17 years, for public disturbances. The children were brought before the Criminal Peace Judge[53] who charged them with causing public disturbances, according to article 489 of the Criminal Code which sanctions the crime with an arrest of ten to fifty days: Furthermore, the children were sent to a juvenile detention centre without having been given access to a lawyer to represent their case, in contravention to Article 40.2.b of the Convention on the Rights of the Child.

OMCT wishes to state that the Guatemalan judicial system urgently requires major reforms, such as the creation of juvenile courts with judges and personnel specifically trained in juvenile justice and children's rights. This entails the provision of adequate funding that would make it possible to expand the resources required for the development of Guatemala's current judicial system.

52 - OMCT, GTM case 080299.CC.

53 - *Juez de Paz Penal*

24

VII. Conclusions and Recommendations

The State of Guatemala lacks adequate legal instruments for the protection of children's rights, as has been underlined in this study. It is of utmost urgency that Guatemala adopts a comprehensive national policy on children. This can only be achieved if the legislation and its application comply fully with the principles and provisions of the Convention on the Rights of the Child, ratified by the State of Guatemala ten years ago.

Even though the Report presents a series of measures and actions indicating that efforts are being made to protect children's rights, it is not as effective as it could have been had the entry into force of the Code on Children and Young People not been continually postponed. The lack of this legal instrument means that a large number of Guatemalan regulations, including the Code on Minors, remain in force and contradict the Convention. Reiterating the final observations of the Committee on the Rights of the Child of the State of Guatemala in its first report, OMCT emphasizes the importance of bringing into force the new Code on Children and Young People.

OMCT is concerned about the increase in prostitution of girls in Guatemala and of the lack of effort by the government to combat the trade. OMCT expresses its concern over the lack of legislation in Guatemala protecting women and girls in prostitution and would recommend a complete prohibition of the commercial sexual exploitation of children. It would specifically propose that any person who commits a sexual act with a child for financial or other reward, who invites, persuades or allows any person to commit a sexual act with a child for financial or other rewards, and who participates in, or is involved in, the commercial sexual exploitation of a child, be guilty of an offence.

OMCT also expresses particular concern over the high rate of illegal adoptions in Guatemala which has nothing to do with the best interest of the child but is merely a lucrative business. Many of these adoption

25

cases involve abuse, threats and intimidation of the mothers. In certain cases the babies are simply stolen from the mother. OMCT would recommend that Guatemala passes laws regulating adoptions, including the Children and Adolescent Code, to ensure the elimination of private adoptions.

Regarding the discrimination against girls, OMCT recommends that the Committee of the Rights of the Child urge the Government to amend its legislation to fix the same minimum age of marriage for both girls and boys, without exception on a discriminatory basis.

OMCT notes with concern that the criminal legislation does not contain a definition of torture which fully covers all the elements in the definition contained in article 1 of the Convention against Torture and which violates article 2 of the same Convention. As such, it would recommend the enactment of a law identifying torture as a specific crime which enables prosecution of torture, as defined in the Convention, and ensures the application of appropriate penalties. OMCT also recommends that a complaints procedure be set up to deal with complaints of torture, which will enable the initiation of legal proceedings against the accused perpetrators.

OMCT condemns the fact that child torture is being carried out by the State security forces and that, in the many cases which are the subject of formal complaints, no official response is received from the authorities. Moreover, OMCT recommends that the victims of violations be awarded appropriate compensation to enable such children to receive medical, physical and psychological care and to be rehabilitated and reintegrated into society.

Concrete measures must be adopted to eradicate torture and other inhumane treatment or punishment of children, which is reported to be increasing. OMCT recommends that situations conducive to the contravention of the rights enshrined in the Convention be identified and that measures be implemented to eradicate such situations and prevent such offences from being committed.

With respect to violence against children, OMCT stresses that, in the absence of a programme designed to eradicate violence containing concrete, realistic and measurable goals, it will be impossible to effectively combat the problem of violence against children.

The Report of the State of Guatemala states

that the number of boys and girls living on the street has been rising in recent years. OMCT considers the creation of a plan for the care of street children[54] to be a positive development and would recommend the immediate implementation of such a plan. Guatemala's current legislation may lead to street children being classified in the "irregular situation" category, under which they are treated in the same way as children who have committed violent crimes. OMCT recommends that criminal measures need to be distinguished from welfare measures, otherwise penal institutions appear to be on the same footing as welfare institutions, creating confusion and possible stigmatisation of street children as criminals.

OMCT condemns the climate of impunity with regard to the processing, investigation and court action on reported cases of violations and abuse perpetrated against children. In many instances, both the District Attorney's Office and the examining magistrate dismiss overwhelming evidence of human rights abuses in the conduct of cases. The problem is compounded by the lack of an effective legal doctrine to investigate, prosecute and give adequate sentences to those found guilty of crimes such as torture. OMCT therefore calls on the State of Guatemala to comply strictly with its laws, as well as to implement specific measures to combat impunity.

OMCT recommends the urgent reform of the judicial system. Failure to bring into force the Code on Children and Young People is perpetuating a situation in which children are being deprived of basic rights. OMCT urges that children within the judicial system be treated in a manner commensurate with their age. Deprivation of liberty must be considered as a last-resort measure.

OMCT wishes to point out that the current 1979 Code on Minors does not require Juvenile Judges or District Attorneys to have special skills. Officials working in the juvenile justice system do not receive training on the rights of children and human rights. The budget cuts imposed upon the judicial system are also detrimental, especially in the view of the need to compensate the victims of human rights violations. OMCT strongly recommends the creation of juvenile courts manned by specially trained judges and personnel.

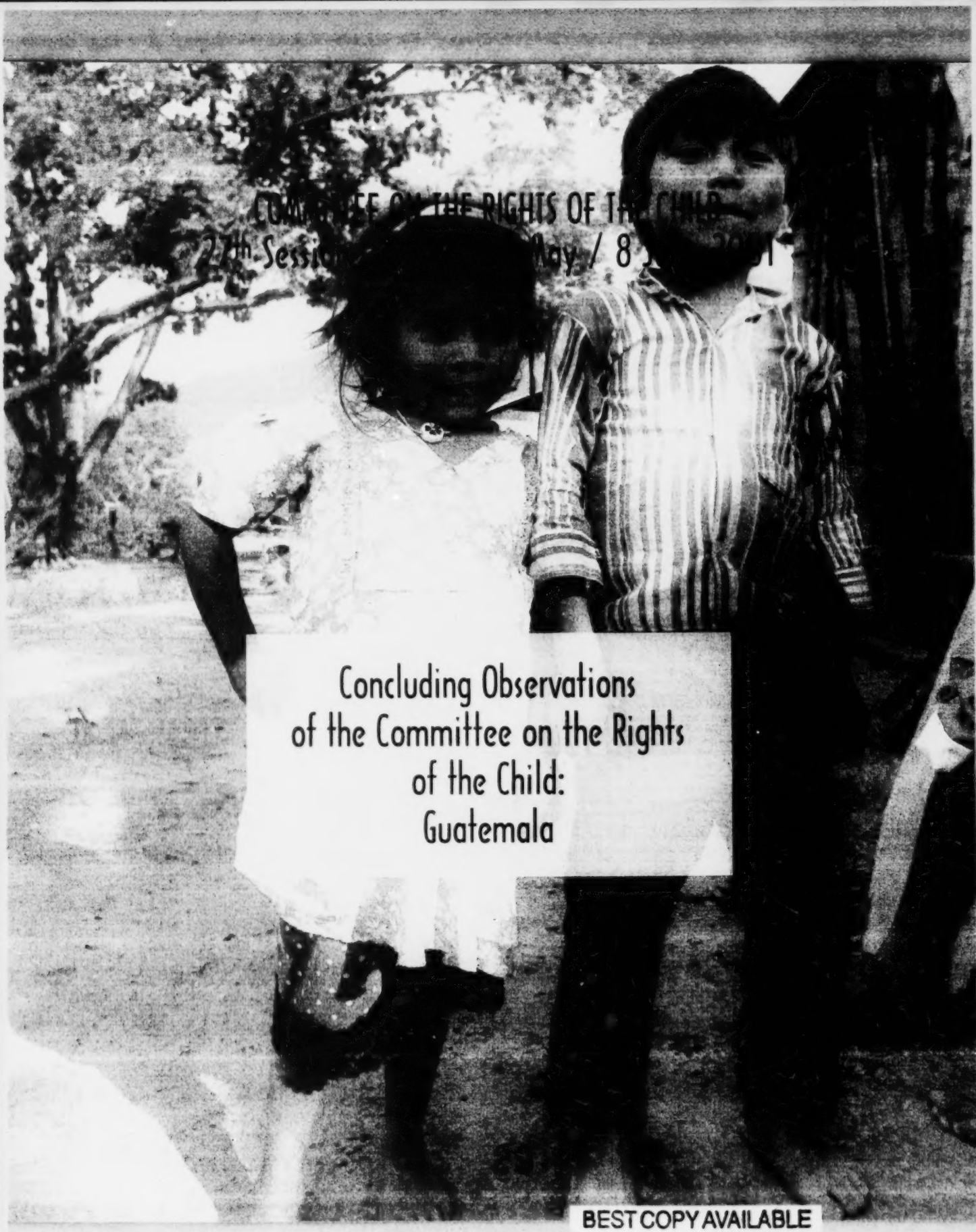
OMCT would also like to highlight the fact that the Code currently in force does not

54 - *Plan de Atención a los niños que viven en la calle*

enshrine the principle of presumption of innocence. This would be remedied if the Code on Children and Young People comes into force. OMCT condemns the fact that children can be detained for up to thirty days, an excessively long period of time, contrary to numerous recommendations of the Committee on the Rights of the Child in the past and clearly against the best interests of the child.

Finally, OMCT calls upon the State of Guatemala to ensure the protection of the human rights of children, and to maintain respect for their rights and fundamental liberties, in accordance with national and international laws, in particular the Convention on the Rights of the Child and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

28



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CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 44 OF THE CONVENTION

1. The Committee considered the second periodic report of Guatemala (CRC/C/65/Add.10)), submitted on 7 October 1998, at its 707th and 708th meetings (see CRC/C/SR.707-708), held on 29 May 2001, and adopted at the 721st meeting, held on 8 June 2001, the following concluding observations.

A. Introduction

2. The Committee welcomes the submission of the State party's second periodic report, which follows the guidelines for reporting, and of the written replies to its list of issues (CRC/C/Q/GUA.2). It further notes with appreciation the high-ranking delegation sent by the State party and welcomes the frank dialogue and the positive reactions to the suggestions and recommendations made during the discussion.

B. Follow-up measures undertaken and progress achieved by the State party

3. The Committee notes with satisfaction that for the preparation of the second periodic report the State party carried out a consultation process with representatives of civil society, including non governmental organisations..

4. The development of a Master Plan of Operations for 1997-2001 established by the SEGEPLAN (the National Economic Planning Council of the Guatemalan Government) and UNICEF in order to support and implement activities to improve the living conditions of women and children is welcomed by the Committee.

5. In the light of its recommendation (see CRC/C/15/Add.58, para.33), the Committee welcomes the creation of a National Commission against Child Abuse (CONACMI) and the conduction of two "National Campaign against Child Abuse" in 1996 and 1998.

6. The establishment of an Advisory Committee on Educational Reform for the modification of curriculum content to help eradicate stereotypes and discrimination based on sex, ethnic and social origin, or poverty; and the programme for girls linked to the National System of the Improvement of Human Resources and Curricula developed by the Ministry of Education for the use of a gender methodology and an inter-cultural approach in curricula, text-books and educational material are welcomed by the Committee as follow-up measures to its recommendation (CRC/C/15/Add.58, para.30).

7. The Committee notes with interest the Education Programme for Working Children and Adolescents (PENNAT) for the assistance of children who work in markets, parks, and streets in both urban and rural areas.

8. The Committee welcomes the initiative taken by those working in the juvenile justice system to develop and sign in October 2000 a document for the unification of criteria to be applied in the juvenile justice system in absence of a common system. If further welcomes the implementation in 2000 of a Programme on Probation as a follow-up measure to its recommendations (CRC/C/15/Add.58, para.40).

C. Factors and difficulties impeding progress in the implementation of the Convention

9. The Committee, while noting many progresses since the signature of the final peace agreement on 29 December 1996, notes with concern that the State party is still facing many difficulties in the implementation of the Convention, in particular due to the legacy of poverty and authoritarian rule, as well as human rights violations and impunity resulting from more than 30 years of armed conflict. Of particular concern for the Committee is also the recent information that there are signs of deterioration of the human rights situation. It also notes the serious economic and social disparities affecting most of the population, in particular indigenous people.

D. Principal areas of concern and recommendation

1. General Measures of Implementation

Legislation

10. The Committee is deeply concerned that the entry into force of the Children and Adolescent Code of 1996 was initially postponed several times and then, on 24 February 2000, was suspended indefinitely by Congress Decree No. 4-2000. Concern is also expressed that part of the provisions of a new draft Children Code introduced before Congress in October 2000, is not in conformity with the provisions of the Guatemalan Constitution and the Convention, as also noted in the Written Replies by the Government of Guatemala to the List of Issues (CRC/C/…). The Committee notes with hope that, according to the information provided in the dialogue with the State party, the relevant parties, the Congress and civil society, are engaged in negotiations and discussions about the drafting of a Children's Code, which is in conformity with the Constitution and the Convention.

11. The Committee, in line with its previous recommendation (CRC/C/15/ Add.58, para. 25), strongly recommends that the State party support as much as possible the process resulting in a new Children and Adolescent Code in full conformity with the principles and provisions of the Convention, expedite its approval by Congress and ensure its enactment and full implementation as soon as possible.

This new Code should make a clear distinction, in terms of judicial procedures and treatment, between children in need of care and protection and those in conflict with the law and, therefore, should not be based on the doctrine of "irregular situation".

Coordination

12. The Committee is concerned at the inadequate coordination within government agencies, both at the national and local levels, as well as between government agencies and non governmental organisations working in the field of children's rights. Further, it notes with concern that the bodies designated to carry out these tasks, the National Children's Council at national level and the Departmental and Municipal

Children's Councils at local level, were not established because the Children and Adolescent Code did not enter into force. It is also noted that another coordinating body, the Commission for the Convention on the Rights of the Child (PRODEN), due to a cut in its resources, had to scale down its activities.

13. The Committee reiterates to the State party its previous recommendation for a permanent and multidisciplinary mechanism to be developed for coordinating and implementing the Convention at the national and local levels, including the establishment of various mechanisms at all levels to ensure the effective decentralisation of the implementation of the Convention, and for the promotion of close cooperation with non-governmental organisations (CRC/C/15/Add.58, para.27). Further, it recommends the allocation of adequate financial and human resources to existing bodies working in the field of children's rights.

Allocations of budgetary resources

14. While noting the information that there has been an increase in budgetary allocations for children, the Committee nevertheless reiterates its concern that these allocations are not sufficient to respond to national and local priorities for the protection and promotion of children's rights and to overcome and remedy existing disparities between the regions and rural/urban areas with respect to services provided to children (CRC/C/15/Add.58, para.31). Further, it notes with deep concern that, according to data provided in the State party's report, 88.9 percent of the population aged between 0 and 14 live in a state of poverty..

15. In light of article 4 of the Convention, the Committee encourages the State party to strengthen its efforts to reduce poverty among children and to identify clearly its priorities with respect to child rights issues in order to ensure that funds are allocated "to the maximum extent of […] available resources and, where needed, within the framework of international cooperation" for the full implementation of the economic, social and cultural rights of children, in particular with respect to local governments and for children belonging to the most vulnerable groups in society. It further recommends that the State party identify the amount and proportion of the budget spent on children at the national and local levels in order to evaluate the impact and effect of the

expenditures on children. The State party is encouraged to seek international cooperation and technical assistance in this regard.

Data collection

16. The Committee notes that measures were taken by the State party in line with its recommendation (CRC/C/15/Add.58, para.28), such as the establishment of the National Statistical Institute of the social indicator system and the National Survey on Maternal and Child Health of 1999. It nevertheless expresses its concern that the collection of data is still focused on health and education and does not include all areas covered by the Convention.

17. The Committee recommends that the State party continue to develop a system to collect data and indicators reflecting the provisions of the Convention, disaggregated by gender, age, indigenous and minority groups, urban or rural areas. This system should cover all children up to the age of 18 years, with specific emphasis on those who are particularly vulnerable, including children belonging to indigenous groups; child victims of abuse, neglect, or ill-treatment; children with disabilities; children who are displaced; children in conflict with the law; children who work; children who are sexually exploited for commercial purposes; adopted children and children living in the streets and in rural areas. It further encourages the State party to use these indicators and data for the formulation of policies and programmes for the effective implementation of the Convention.

Dissemination and training

18. The Committee recognises that material on the promotion of human rights was disseminated by both governmental agencies and non-governmental organisations, but it notes that these measures need to be strengthened in particular in rural areas and among indigenous children.

19. The Committee recommends that the State party increase its efforts to translate informative material into the main indigenous languages and that it develop more creative methods to promote the Convention, including through audiovisual aids such as picture books and posters, in particular at local level. The Committee also recommends adequate and systematic training and/or sensitization of professional groups working

with and for children, such as judges, lawyers, law enforcement personnel, teachers, school administrators and health personnel. The State party is encouraged to fully integrate the Convention into the curricula at all levels of the educational system. It is suggested that the State party seek technical assistance from, among others, UNICEF, UNESCO and OHCHR.

Civil society

20. The Committee, while noticing examples of collaboration between governmental institutions and non governmental organisations, such as within the Commission for the Convention on the Rights of the Child (PRODEN), it nevertheless notes that cooperation with non governmental organisations should be further promoted and reinforced. Concern is also expressed that some non governmental organisations working in the field of children have lately been subjected to threats and assaults.

21. The Committee reiterates its recommendation (CRC/C/15/Add.58, para.27) to encourage the promotion of a closer cooperation with non governmental organisations for the coordination and implementation of the Convention at the national and local levels and in urban and rural areas. It strongly recommends the State party to effectively investigate and prosecute cases of threats and assaults against non-governmental organisations working with and for children and to take the necessary measures to prevent such cases.

2. Definition of the child

22. The Committee reiterates its concern about the disparity between the legal minimum age for admission to employment (14 years) and the age for the end of compulsory education (15 years). Further, it notes that, in line with its recommendation (CRC/C/15/Add.58, para. 26), a proposal to set the same minimum legal age for the marriage of boys and that of girls at 16 was introduced to the Congress but, nevertheless, was never considered.

23. In light of article 1, 2 and other related provisions of the Convention, the Committee reiterates its recommendation that the State party pursue its efforts to review its legislation with a view to increasing the minimum age of marriage for girls to that for boys in order to bring it into full conformity with the provisions

and principles of the Convention. It further recommends that the State party redefine the minimum age for admission to employment in order to have it correspond to the age of when compulsory education ends.

3. General principles

24. The Committee is concerned that the principles of non-discrimination (art. 2 of the Convention), best interests of the child (art. 3) and respect for the views of the child (art. 12) are not fully reflected in the State party's legislation and administrative and judicial decisions, as well as in policies and programmes relevant to children at both national and local levels.

25. The Committee recommends that the State party appropriately integrate general principles of the Convention, in particular the provisions of articles 2, 3 and 12, in all relevant legislation concerning children, and apply them in all political, judicial and administrative decisions, as well as in projects, programmes and services which have an impact on all children. These principles should guide planning and policy-making at every level, as well as actions taken by social and health welfare institutions, courts of law and administrative authorities.

Non-discrimination

26. The Committee is concerned that the principle of non-discrimination (art. 2 of the Convention) is not fully implemented for children belonging to indigenous groups; the urban and rural poor children; girls; children with disabilities; children living in displaced communities and in rural areas, especially with regard to their access to adequate health and educational facilities.

27. The Committee recommends that the State party take all the necessary measures to end discrimination. In this respect, the State party is recommended to monitor the discrimination against children, in particular those belonging to the above-mentioned vulnerable groups, and to develop, on the basis of the results of this monitoring, comprehensive strategies containing specific and well targeted actions aimed at ending all forms of discrimination.

4. Civil rights and freedoms

Birth registration

28. The Committee notes with concern that a high rate of children, in particular girls in rural and poor urban areas, are not registered because of distance or because parents are unaware of the importance of the procedure for birth registration.

29. In light of article 7 of the Convention, the Committee recommends that the State party develop more widespread awareness, among the population of the importance of birth registration and improve the registration system in order to reach all people, in particular in the rural areas.

Torture, or other cruel, inhuman or degrading treatment or punishment

30. The Committee is deeply concerned about the information that violence against children is increasing. In particular, it notes with great concern that many children fear for their lives because they are continually threatened and are victims of violence, notably when they are living and/or working in the street but also when they are at home. Of particular concern for the Committee is the alleged involvement of the State Civil Police in some of these cases of violence and the lack of proper investigation of these cases by Guatemalan authorities.

31. The Committee recommends that the State party take, as a matter of the highest priority, all the necessary steps to prevent these serious violations of children's rights, ensure their proper investigation and bring those responsible for these violations to justice. In light of article 39, the Committee also invites the State party to take all appropriate measures to ensure physical and psychological recovery and social reintegration for child victims of torture and/or ill treatment, also by providing adequate compensations to the victims.In this regard, the State party is invited to seek international cooperation.

5. Family environment and alternative care

Parental responsibilities

32. The development of some initiatives such as the Plan of Action for Social

Development and Peace-building 1996-2000 which had among its priorities the strengthening of the family, schooling for parents and the Comprehensive Care Programme for Children under Six (PAIN), are regarded as positive measures in line with the Committee's recommendation (CRC/C/15/Add.58, para.38). The Committee is however concerned that these programmes have little impact compared to the number of children and parents who need this support.

33. In light of article 18 of the Convention, the Committee reiterates its recommendation to improve social assistance to families to help them with their child-rearing responsibilities, including through counselling and community-based programmes, as a means of reducing the number of children in institutional care. The Committee recommends that the State party seek international assistance from, among others, UNICEF.

Adoption

34. The Committee notes with deep concern that there was no follow up to its recommendation (CRC/C/15/Add.58, para.34) to introduce the measures necessary to monitor and supervise effectively the system of adoption and to consider ratifying the Hague Convention of 1993 on Protection of Children and Cooperation in respect of Intercountry Adoption. Concern is expressed at the extremely high rates of intercountry adoptions, at adoption procedures not requiring authorisation by competent authorities, at the absence of follow up and, in particular, at reported information on sale and trafficking in children for intercountry adoptions. It is also noted that several drafts of adoption laws have been pending in Congress but were never adopted.

35. In light of article 21 of the Convention and in line with the recommendations of the Special Rapporteur on the sale of children, child prostitution and child pornography (E/CN.4/2000/73/Add.2) and of the United Nations Verification Mission in Guatemala (MINUGUA), the Committee strongly recommends that the State party suspend adoptions in order to take the adequate legislative and institutional measures to prevent sale and trafficking of children and to establish an adoption practice which is in full compliance with the principles and provisions of the Convention. It further reiterates its recommendation to ratify the

Hague Convention of 1993 on Protection of Children and Cooperation in respect of Intercountry Adoption.

Abuse and neglect

36. The adoption of the Act on the Prevention, Punishment and Eradication of Domestic Violence in 1996, the creation of a National Commission against Child Abuse (CONACMI) and the dissemination of national campaigns against child abuse are considered positive measures in line with the Committee's recommendation (CRC/C/15/Add.58, para.33). However, concern is expressed at the lack of data, appropriate measures, mechanisms and resources to prevent and combat domestic violence, including child physical and sexual abuse, and neglect and at the limited number of services for abused children, in particular in rural areas.

37. In light of article 19 of the Convention, the Committee recommends that the State party undertake studies on domestic violence, ill-treatment and abuse, including sexual abuse, in order to understand the extent, scope and nature of these practices, adopt and effectively implement adequate measures and policies, and contribute to changing attitudes. The Committee also recommends that cases of domestic violence and ill-treatment and abuse of children, including sexual abuse within the family, be properly investigated within a child-sensitive inquiry and judicial procedure in order to ensure better protection of child victims, including the protection of their right to privacy. Measures should also be taken to provide support services to children in legal proceedings, and for the physical and psychological recovery and social reintegration of the victims of rape, abuse, neglect, ill-treatment and violence, in accordance with article 39 of the Convention. The Committee recommends that the State party seek, in this regard, international cooperation and technical assistance from, among others, UNICEF and WHO.

6. Basic health and welfare

Children with disabilities

38. The Committee, while noting the Act on the Provision of Services for Persons with Disabilities of 1996 and the establishment of a National Network for Support to Disabled Persons which has also established

department links in the interior of the country, is nevertheless concerned that discrimination against children with disabilities still occurs and that often parents are unaware of their children's rights. Further, it is concerned about the huge number of children with disabilities who are institutionalised and by the general lack of resources and specialised staff for these children.

39. In light of article 23 of the Convention, the Committee recommends that the State party undertake measures to ensure that the situation of children with disabilities is monitored in order to effectively assess their situation and needs and conduct public awareness campaigns in all languages, in particular indigenous ones, to raise awareness of the situation and rights of children with disabilities. It further recommends that the State party allocate the necessary resources for programmes and facilities for all children with disabilities, especially the ones living in rural areas, and develop community-based programmes to enable them to stay at home with their families. Also programmes for support to parents of children with disabilities are recommended with counselling and, when necessary, financial support. In light of the Standard Rules on the Equalization of Opportunities for Persons with Disabilities (General Assembly resolution 48/96) and the Committee's recommendations adopted at its day of general discussion on "The rights of children with disabilities" (see CRC/C/69), it is also reiterated (CRC/C/15/ Add.58,para.38) that the State further encourage their integration into the regular educational system and inclusion into society, including by providing special training to teachers and by making schools more accessible. The Committee recommends that the State party seek technical assistance from, among others, WHO.

Health and health services

40. Measures such as the launching of a Comprehensive Health Care System (SIAS), the Friendly Hospitals initiative, a national plan for the reduction of maternal and perinatal mortality and a national mother and child programme are regarded as positive measures. However, the Committee is concerned that the health levels of the children living in Guatemala, especially of children living in the rural areas and in poor urban areas, are inadequate.

It notes in particular that, due also to nutritional deficiencies, lack of sanitation facilities and limited access to preventive and curative health services, there are high infant mortality rates, with wide differences between urban and rural areas and between the different ethnic groups; and high maternal mortality rates, largely due to a high incidence of illegal abortion.

41. In light of art. 24 of the Convention, the Committee recommends that the State party allocate appropriate resources and develop comprehensive policies and programmes to improve the health situation of all children without discrimination, in particular by focusing more on primary care level and decentralising the health care system. In particular, to prevent child mortality and morbidity and to address the high number of maternal mortality rates, it recommends the provision of adequate antenatal and postnatal health care services and the development of campaigns to inform parents on basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation, family planning and reproductive health. With reference to the immunisation programme, the Committee encourages the State party to look to international cooperation for its full and efficient implementation. Further, it recommends to the State party to seek technical assistance from, among others, WHO, UNICEF and the United Nations Population Fund (UNFPA).

Malnutrition

42. The Committee notes that the State party has implemented a number of food and nutrition programmes in favour of children in schools such as the "Happy Heart" programme, as also recommended in its recommendation (CRC/C/15/Add.58, para.36). However, by noting the high rates of both chronic and severe malnutrition still affecting in particular children under five in rural areas, esopecially those belonging to indigenous groups, it expresses its deep concern that there are no governmental policies to reduce and combat malnutrition among babies and children under five.

43. The Committee reiterates its recommendation that the State party develop a comprehensive nutritional programme in order to prevent and combat malnutrition, in particular among children under five

(CRC/C/15/Add.58, para.36), and assess the impact of the programme on those affected with a view eventually to improving its effectiveness. The Committee recommends that the State party seek international cooperation from, among others, UNICEF and WHO.

Adolescent health

44. The Committee expresses its concern regarding the high rates of early pregnancy, the rise in the number of children and youths using drugs, the increase in cases of sexually transmitted diseases (STDs), in particular syphilis, and the growing numbers of cases of HIV/AIDS among youths. Further, it notes the limited availability of programmes and services in the area of adolescent health, including mental health, and the lack of sufficient prevention and information programmes in schools, especially on reproductive health.

45. The Committee recommends that the State party increase its efforts to promote adolescent health, including mental health, policies particularly with respect to reproductive health and substance abuse consumption and strengthen the programme for health education in schools. The Committee further suggests that a comprehensive and multidisciplinary study be undertaken to understand the scope of adolescent health problems, including the negative impact of STDs and HIV/AIDS, in order to be able to develop adequate policies and programmes. It is also recommended that the State party undertake further measures, including the allocation of adequate human and financial resources, to evaluate the effectiveness of training programmes in health education, in particular as regards reproductive health, and to develop youth-sensitive and confidential counselling, care and rehabilitation facilities that are accessible without parental consent when this is in the best interests of the child. The Committee encourages the State party to seek additional technical cooperation from, among others, UNFPA, UNICEF, WHO and UNAIDS.

7. Education, leisure and cultural activities

Education

46. While noting with appreciation the number of national efforts undertaken to extend

the coverage and improving the quality of the school system, particularly at the pre-school and primary levels and with special attention paid to girls, the Committee is nevertheless concerned about the high repetition and drop-out rates, the high number of children with respect to the number of teachers and the high incidence of absenteeism, truancy and over-age pupils. Further, it notes with concern that bilingual education is offered only in a limited number of indigenous languages and only at pre-school level and in the first three grades of primary schooling.

47. In light of article 28 and 29 of the Convention, the Committee recommends that the State party undertake appropriate measures to increase budgetary allocations for education, ensure regular attendance at schools and the reduction of drop-out rates, and strengthen the quality of education in order to achieve the goals mentioned in art. 29(1), in line with the Committee's General Comments on the Aims of Education. It also reiterates its recommendation (CRC/C/15/Add.58, para.37) that the State party continue to strengthen the teacher training programme in order to increase the number of trained teachers and improve the quality of teaching and the bilingual education programme. In this respect, the Committee encourages the State party to seek additional technical cooperation from, among others, UNESCO and UNICEF.

8. Special protection measures

Children affected by armed conflict

48. The Committee notes that the State party launched an action plan for the psychological rehabilitation for children affected by the armed conflict based on a preventive programme with community participation, as previously recommended by the Committee (CRC/C/15/Add.58, para.39). However, it expresses its concern at the lack of professional staff prepared to work in these communities and at the insufficient number of services to meet demand. It also notes with concern that a high number of children were internally displaced or forcibly disappeared during the armed conflict and that the State party did not investigate these disappearances effectively.

49. In light of art.39 of the Convention, the Committee recommends that the State party consider complying with the Truth Commission's recommendations about a

National Reparation Programme also including children affected by the internal armed conflict and effectively investigate all cases of children who forcibly disappeared by allocating human and financial resources to and cooperate with the National Commission for Searching for Disappeared Children. Further, the Committee recommends that the State party strengthen its efforts to implement the Programme to Support Resettlement of Displaced Groups and to ensure adequate protection to internally displaced children with special attention to the problem of lack of identification papers. The Committee encourages the State party to continue its international cooperation programmes with, among others, UNDP, UNHCR and HABITAT.

Economic exploitation

50. With regard to its recommendation on child labour (CRC/C/15/Add.58, para.39), the Committee takes note of the measures undertaken by the State party such as the signature in 1996 of a memorandum of understanding with ILO for the adoption of the International Programme on the Elimination of Child Labour (IPEC). However, it expresses its deep concern at the high number of children who are still exploited economically, in particular those under 14 years of age.

51. In light of art. 32 of the Convention and in line with its previous recommendation (CRC/C/15/Add.58, para. 41), the Committee reiterates that the State party continue to enforce and strengthen its legislation protecting working children and to combat and eradicate as effectively as possible all forms of child labour, in cooperation with ILO/IPEC.

Sexual exploitation

52. While noting that the National Plan Against Sexual and Commercial Exploitation is at its final stage of elaboration, the Committee expresses its deep concern that, with regard to the increasing phenomenon of commercial sexual exploitation of children, in particular girls, there are no data available, legislation is inadequate, cases involving children sexually exploited are often not investigated and prosecuted, and no rehabilitation programmes are available.

53. In light of art. 34 of the Convention and in line with the recommendations of the Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography (E/CN.4/2000/73/Add.2), the Committee recommends that the State party expedite the adoption of the National Plan Against Sexual and Commercial Exploitation, taking into account the Stockholm World Congress against Commercial Sexual Exploitation Agenda for Action, and undertake a study on this issue in order to understand its scope and causes, to enable effective monitoring of the problem and to develop all necessary measures and programmes to prevent, combat and eliminate sexual exploitation and abuse of children.. In this regard, the Committee invites the State party to seek international cooperation.

Children living in the streets

54. The Committee expresses its concern at the significant number of children living in the streets and notes that assistance to these children is generally provided mainly by non-governmental organisations. In light of art. 6 of the Convention (right to life, survival and development), deep concern is expressed at allegations of rape, ill treatment and torture, including murder for the purpose of social cleansing, of children living in the streets.

55. The Committee recommends that the State party expedite the adoption of a National Plan for the Care of Street Children and ensure that children living in the streets are provided with nutrition, clothing, housing, health care and education opportunities, including vocational and life-skills training, in order to support their full development. Moreover, the State party should ensure that these children are provided with rehabilitation services for physical, sexual and substance abuse; protection from police brutality; and services for reconciliation with families. The Committee encourages the State party to seek additional international cooperation from, among others, UNICEF and WHO.

Juvenile justice

56. The Committee expresses its deep concern that its previous recommendation encouraging the reform of the juvenile justice system to ensure its full compatibility with the principles and provisions of the Convention (CRC/C/15/Add.58, para.40)

has not been yet implemented because of the postponement of the entry into force of the Children and Adolescent Code of 1996. In particular, it reiterates its concern about the doctrine of "irregular situation" and notes that legal assistance for children is not mandatory and that the presence of a translator in case of indigenous children is not required. Concern is also expressed at the long periods of pre-trial detention and at poor conditions in detention centres, at the fact that children with no prior criminal record are held together with children with a criminal record and that inadequate education, rehabilitation and reintegration programmes are provided during the detention period.

57. In line with its previous recommendation and with the Special Rapporteur on the independence of judges and lawyers' one (E/CN.4/2000/61/Add.1), the Committee recommends that the State party continue reviewing the law and practices regarding the juvenile justice system in order to bring it as soon as possible in full compliance with the Convention, in particular articles 37, 40 and 39, as well as with other relevant international standards in this area, such as the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) and the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines) and expedite the adoption of the Children and Adolescents Code of 1996 which guarantees due process of law for children and social and educational correctional measures. In particular, it reminds the State party that juvenile offenders should be dealt with without delay, in order to avoid incommunicado periods of detention, and that pre-trial detention should be used only as a measure of last resort, should be as short as possible and should be no longer than the period prescribed by law. Alternative measures to prevent pre-trial detention should be used whenever possible.

58. With reference to children deprived of liberty, the Committee recommends that the State party incorporate into its legislation and practices the United Nations Rules for the Protection of Juveniles Deprived of Liberty, in particular to guarantee them access to effective complaints procedures covering all aspects of their treatment, and take appropriate rehabilitative measures to promote the social reintegration of the children involved in the juvenile justice system. Finally, the Committee recommends that the

State party seek assistance from, *inter alia*, the Office of the High Commissioner for Human rights, the United Nations Centre for International Crime Prevention, the International Network on Juvenile Justice, and UNICEF through the United Nations Coordination Panel on Technical Advice and Assistance on Juvenile Justice.

Optional protocols

59. The Committee encourages the State party to ratify and implement the Optional Protocols to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, and the one on the involvement of children in armed conflict.

9. Dissemination of Documents from the Reporting Process

60. Finally, the Committee recommends that, in light of article 44, paragraph 6, of the Convention, the second periodical report and written replies presented by the State party be made widely available to the public at large and that the publication of the report be considered, along with the relevant summary records and the concluding observations adopted thereon by the Committee. Such a document should be widely distributed in order to generate debate and awareness of the Convention and its implementation and monitoring within the Government and the general public, including NG.

The World Organisation Against Torture (OMCT) wishes to extend its gratitude for its support to the Children's Programme to:

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